

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1144466  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Ernest Paul LE BOEUF

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1989

Ernest Paul LE BOEUF

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 February 1973, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman's documents for three months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as a TANKERMAN on board the United States Tank Barge LBT 20 under authority of the document above captioned, on 14 January 1973, Appellant wrongfully failed to properly supervise the loading of BUNKER C to the said barge which resulted in No. 2 Port Tank overflowing and thereby contributed to the pollution of the navigable waters of the United States at mile 168 AHP, Lower Mississippi River.

At the hearing, Appellant was represented by non-professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of an employee on the barge.

In defense, Appellant offered in evidence his own testimony and that of a fellow employee.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents issued to Appellant for a period of three months on twelve months' probation.

The entire decision and order was served on 21 February 1973. Appeal was timely filed.

FINDINGS OF FACT

On 14 January 1973, Appellant was serving as a TANKERMAN on board the United States Tank Barge LBT 20 and acting under authority of his document while the barge was being loaded with BUNKER C while at mile 168 AHP Lower Mississippi River. On this date Appellant was the tankerman who was the senior deck officer on duty, as required by 46 CFR 35.35-20, in charge of the loading of four tank barges, simultaneously, one of which was the LBT 20. When Appellant noticed that the LBT 20 was loading faster than the LBT 76 he instructed two assistants to secure the loading valves. After being advised that all valves had been secured he heard a hissing noise from a partially opened valve and immediately stopped operations. However, this action was too late to prevent an oil spill, of not more than five gallons, from the No. 2 port tank of the LBT 20. Through the use of absorbent most of the oil was contained on board, with some oil going overboard polluting the Mississippi River.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the order is excessively harsh.

APPEARANCE: Lemle, Kelleher of New Orleans, LA, by D.R. Abaunza, Esq.

#### OPINION

##### I

The only issue raised on appeal is that the suspension order of three months which shall not be effective provided no subsequent charge is proved against Appellant for acts committed within twelve months from 21 February 1973 is "excessively harsh." There is no dispute as to the facts and they are as I have indicated.

Appellant urges me to consider in mitigation or rescission the fact that a small amount of petroleum was spilled, that the subsequent clean-up operations were extraordinary and costly, and that he did everything humanly possible to prevent and then contain the spill.

##### II

I must first state that the subsequent extraordinary clean-up operations, although advantageous in minimizing the extent of pollution, was beneficial to the operator or owner. They had the responsibility for subsequent oil removal and must bear the expense of removal under section 311(f) of the Federal Water Pollution

Control Act, (33 U.S.C. 1321(f)). This statutory obligation does not lie with the Appellant and will not be considered in his defense.

### III

The appropriate matters advanced by Appellant in mitigation or rescission were properly considered by the Administrative Law Judge. The degree of severity of an order is a matter peculiarly within the discretion of the Judge. This being so, an order will be modified on appeal only upon a clear showing of arbitrary or capricious action on his part. I find that the probationary order is reasonable and well within the Judge's discretion. The probationary order should instill a greater degree of caution and have a singularly therapeutic impact on the Appellant in fulfilling his responsibilities towards assuring that there shall be no discharges of oil into the waters of the United States.

### ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 15 February 1973, is AFFIRMED.

T. R. SARGENT  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 7th day of September 1973.

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